NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 17 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. GERARDO OROZCO-QUIROZ, Defendant-Appellant.	No. 05-50190 D.C. CR-04-00715-JAH MEMORANDUM [*]

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted March 9, 2006[**]
Submission withdrawn and deferred March 16, 2006
Resubmitted August 15, 2006
Pasadena, California

Before: WARDLAW and RAWLINSON, Circuit Judges, and CEBULL, [***]

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. 34(a)(2).

[***] The Honorable Richard F. Cebull, United States District Judge for the District of Montana, sitting by designation.

District Judge.

Gerardo Orozco-Quiroz appeals his 70-month sentence imposed following his conviction for illegal reentry into the United States in violation of 18 U.S.C. § 1326. Orozco first argues that the district court imposed an unreasonable sentence in light of his mental illness and in consideration of the factors set forth under 18 U.S.C. § 3553(a). Orozco next argues that the district court improperly applied an enhancement based on Orozco's recidivism and prior conviction and that said enhancement violated his Six Amendment rights because those facts were not admitted or found by a jury beyond a reasonable doubt. We reject these arguments and affirm the district court's imposition of sentence.

Orozco's first argument is without merit. The district court appropriately calculated the advisory guideline range and considered the factors listed in 18 U.S.C. § 3553(a). The district court chose a sentence that would deter future reentries by Orozco, would protect the public, would promote respect for the law, and would avoid unwarranted sentencing disparities. At the same time, the sentence accounted for Orozco's psychotic disorder, as the court expressly stated. The sentence reflects the district court's careful application of the guidelines and the factors in section 3553(a) to Orozco and his offense.

Orozco's second argument is also without merit. Orozco argues that the

Supreme Court's reasoning and holding in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) that prior convictions need not be admitted or found by a jury have been undermined by recent decisions, such as *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004). We have revisited this issue several times and have held firm in our conclusion that speculation about the demise of *Almendarez-Torres* is immaterial. *United States v. Pacheco-Zepeda*, 234 F.3d 411, 414 (9th Cir. 2000); *see also Hohn v. United States*, 524 U.S. 236, 252-53 ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."); *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (lower courts should "leav[e] to this Court the prerogative of overruling its own decisions").

AFFIRMED.